IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

OP.No. 32469 of 2000(M)

PETITIONER:

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1. M.C.SAINABA, D/O.ABDULLAKUTTY HAJI,
AGED 40 YEARS, A.P.M.HOUSE,
PADUVILAYI AMSOM, VENGAD DESOM,
VENGAD.P.O., TELLICHERRY TALUK.

2. A.P.M.ABOOTTY, S/O.UMMERKUTTY,
PADUVILAYI AMSOM, VENGAD DESOM,
TELLICHERRY.

3. A.P.M.KUNHAMMED HAJI, RESIDING –DO--

4. M.C.K.FOUSIYA, W/O.K.P.SADIQUE,
RESIDING -DO-.

BY ADV. SRI.T.A.RAMADASAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY,
SECRETARIAT, TRIVANDRUM.

2. THE TAHSILDAR (ASSESSING AUTHORITY),
KERALA BUILDING TAX ACT, TELLICHERRY.

3. THE REVENUE DIVISIONAL OFFICER,
(APPELLATE AUTHORITY UNDER KERALA
BUILDING TAX ACT), TELLICHERRY.

4. THE DISTRICT COLLECTOR,
(REVISIONAL AUTHORITY UNDER KERALA BUILDING TAX ACT),
KANNUR.

BY SHRI.PRADEEP, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO. 32469/2000

ORDER ON CMP NO.55469/2000 IN O.P.NO. 32469/2000

DISMISSED.

16/11/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE DOCUMENTS NO.1998/89 DATED 18/11/89 OF SRO MATTANNUR.

P2 : COPY OF THE DEED NO.183/88 DATED 18/11/88 OF SRO MATTANNUR.

P3 : COPY OF THE DEED NO.1838/88 DATED 18/11/88 OF SRO MATTANNUR.

P4 : COPY OF THE DEED NO.1387/88 OF SRO MATTANNUR.

P5 : COPY OF THE DEED NO.1775/93 ON 27/08/93.

P6(a) : COPY OF THE RECEIPT FOR TAX DATED 27/03/91.
P6(b) : COPY OF THE TAX RECEIPT DATED 27/03/91.
P6(c) : COPY OF THE TAX RECEIPT DATED 27/03/91.
P6(d) : COPY OF THE TAX RECEIPT DATED 27/03/91.

P7 : COPY OF THE ASSESSMENT REGISTER IN THE YEAR 1989-90.

P8 : COPY OF THE ASSESSMENT ORDER DATED 16/01/99.

P9 : COPY OF the DEMAND NOTICE DATED 16/01/99.

P10 : COPY OF THE TAX RECEIPT DATED 12/03/99.

P11 : COPY OF THE ORDER ISSUED BY APPELLATE AUTHORITY DATED 23/03/2000.

P12 : COPY OF the JUDGMENT IN O.P.NO. 16490/2000 OF THIS HONOURABLE COURT.

P13 : COPY OF THE JUDGMENT IN WA NO.1204/2000 OF THIS HONOURABLE COURT.

P14 : COPY OF THE RECEIPT DATED 18/07/2000.

P15 : COPY OF THE ORDER ISSUED BY THE REVISIONAL AUTHORITY DATED 18/10/2000.

P16 : COPY OF THE LIST OF DOCUMENT PRODUCED BEFORE THE APPELLATE AUTHORITY.

P17 : COPY OF THE LIST OF DOCUMENTS PRODUCED BEFORE THE REVISIONAL AUTHORITY.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 32469 of 2000

Dated, this the 16th day of November, 2007

J U D G M E N T

Heard learned counsel for petitioners and learned Government Pleader.

2. Petitioners are challenging assessment and demand of building tax in respect of a shopping complex constructed by them. The assessment is confirmed in appeal and in revision by the District Collector. The main contention raised by the petitioners is that the construction of the building was over before 1989 and therefore the assessment itself is time barred. However, the findings of the authorities are that the petitioners acquired the land itself only on 18/11/1989. On going through Ext.P1 produced by the petitioners, which is the title of the land acquired by the petitioners on which building is constructed, the findings of the authority below is correct. In so far as the date of completion of construction is concerned, petitioners admittedly did not file any return of building tax declaring date of construction before the Tahsildar. Even though petitioners were liable to pay building tax under the statute because the building has the plinth area that attracts tax under the Act, learned counsel submitted that even if

the petitioners failed to file return, assessment cannot be completed after the period of limitation. Claim of limitation can be considered only if there is clear proof on date of completion of construction of the building. The documents produced by the petitioners do not establish date of completion of construction of building. Even though a copy of the building tax assessment by the Panchayat is produced by the petitioners, it is seen there from that the assessment is in the name of several other persons and only a portion of the building is assessed in the name of the petitioners. Petitioners' case is that construction is completed by 4 persons and all of them are petitioners in the original petition. Since petitioners did not produce any documents about ownership of the building by several persons, respondents cannot be blamed for holding that the building is owned by the petitioners jointly because petitioners are the owners of the land on which building is constructed. In any case, so far as the building tax assessment is concerned subject to Explanation 2 to Section 2(e) of the Act, liability remains the same, whether the building is owned by an individual or by several persons jointly. Since petitioners have not produced proof before the lower authorities or even in this Court that building consists of

different apartments and cost of construction is shared by each of them or that construction of building is in piece by each person and ownership of each portion by such person, separate assessment cannot be made. Moreover, the building, admittedly, consists of several shop rooms with common facilities and is not an apartment complex. Therefore, only single assessment is called for, which was rightly done in the name of petitioners as joint owners.

3. Since liability remains the same, there is no scope for interference with single assessment and ordering joint assessment in the name of different persons. I make it clear that the single assessment in the name of one of the co-owners of the building will not affect the separate ownership claimed by them.

4. The last contention raised is with regard to the claim of assessment under capital value method because according to the petitioners the building was constructed before 1992, when plinth area rate came into force. Since there is no document to establish the date of completion of construction of building as such, which consists of several rooms with massive plinth area of 9565.2 sq.f. (956.52 sq.m.), the plinth area method adopted for assessment also cannot be said to be illegal and arbitrary. Moreover, having

regard to the nature of building and since the building is let out, petitioners may not get any reduction on tax, even if capital value method is adopted. However, having regard to the nature of dispute and delay in assessment and payment of around 50% of the tax and the stay granted by this Court, I feel petitioners can be granted waiver of interest for payment of balance building tax due, if petitioners remit the same without further delay. This original petition is, accordingly, disposed of upholding the assessment but by granting waiver of interest on condition that petitioners pay balance tax within one month from the date of receipt of this judgment. However, if payment is not made as above, interest also can be recovered.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

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